

In the Matter Of:

IN RE LTL Management LLC Bankruptcy

JOHN KIM

April 14, 2023



<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES BANKRUPTCY COURT</p> <p>2 DISTRICT OF NEW JERSEY</p> <p>3</p> <p>4 IN RE: Chapter 11</p> <p>5</p> <p>6 LTL MANAGEMENT LLC, Case No.: 23-12825 (MBK)</p> <p>7</p> <p>8 Debtor,</p> <p>9 _____/</p> <p>10</p> <p>11 * C O N F I D E N T I A L *</p> <p>12 VIDEOTAPED DEPOSITION</p> <p>13 OF</p> <p>14 JOHN KIM</p> <p>15 FRIDAY, APRIL 14, 2023</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Reported by:</p> <p>23 Bridget Lombardozzi, CSR, RMR, CRR</p> <p>24 JOB NO. 2023-893116</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S:</p> <p>2</p> <p>3 Attorneys for Official Committee of Talc</p> <p>4 Claimants 1:</p> <p>5</p> <p>6 BROWN RUDNICK</p> <p>7 7 Times Square</p> <p>8 New York, New York 10036</p> <p>9 BY: JEFFREY JONAS, ESQ.</p> <p>10 jjonas@brownrudnick.com</p> <p>11 MICHAEL S. WINOGRAD, ESQ.</p> <p>12 mwinograd@brownrudnick.com</p> <p>13 JENNIFER SCHEIN, ESQ. (Remote)</p> <p>14 jscheinbrownrudnick.com</p> <p>15 SUSAN SIEGER-GRIMM, ESQ. (Remote)</p> <p>16 ssieger-grimm@brownrudnick.com</p> <p>17 W. LYDELL BENSON, ESQ.</p> <p>18 WLBenson@brownrudnick.com</p> <p>19</p> <p>20 GENOVA BURNS</p> <p>21 BY: DANIEL M. STOLZ, ESQ. (Remote)</p> <p>22 Genova Burns</p> <p>23 494 Broad Street</p> <p>24 Newark, NJ 07102</p> <p>25 dstolz@genovaburns.com</p>
<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4 Stenographic videotaped</p> <p>5 deposition of JOHN KIM taken on behalf of the</p> <p>6 Official Committee of Talc Claimants 1 and others</p> <p>7 similarly situated, commencing at 2:23 p.m., on</p> <p>8 Friday, April 14, 2023, at the offices of Skadden,</p> <p>9 Arps, Slate, Meagher & Flom LLP, One Manhattan</p> <p>10 West, New York, New York, before Bridget</p> <p>11 Lombardozzi, Certified Shorthand Reporter,</p> <p>12 Registered Merit Reporter, Certified Realtime</p> <p>13 Reporter, and Notary Public of the State of New</p> <p>14 York, pursuant to notice.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S (Continued)</p> <p>2</p> <p>3 ATTORNEYS FOR DEBTORS:</p> <p>4 JONES DAY</p> <p>5 250 Vesey Street</p> <p>6 New York, New York 10281</p> <p>7 BY: DAVID S. TORBORG, ESQ. (Remote)</p> <p>8 dtorborg@jonesday.com</p> <p>9</p> <p>10 FOR TALC CLAIMANT RANDY DEROUEN AND OTHER TALC</p> <p>11 CLAIMANTS:</p> <p>12 JEROME H. BLOCK, ESQ. (Remote)</p> <p>13 MOSHE MAIMON, ESQ. (Remote)</p> <p>14 LEVY KONIGSBERG LLP</p> <p>15 605 Third Avenue, 33rd Floor</p> <p>16 New York, New York 10158</p> <p>17</p> <p>18 COUNSEL FOR KATHERINE TOLLEFSON:</p> <p>19</p> <p>20 MAUNE RAICHLE HARTLEY FRENCH & MUDD, LLC</p> <p>21 BY: CLAYTON THOMAS, ESQ. (Remote)</p> <p>22 150 W 30th Street</p> <p>23 Suite 201</p> <p>24 New York, NY 10001</p> <p>25</p>

<p style="text-align: right;">Page 49</p> <p>1 Mr. Murdica as far as you know or does he do 2 anything to confirm that those are actual 3 claims? 4 MS. BROWN: I object. It 5 lacks foundation and calls for 6 speculation. 7 Q. You can answer. 8 MS. BROWN: If you know, you 9 can answer, Mr. Kim. 10 A. I can answer I think generally. It 11 depends upon what we're doing or why we're getting 12 that information. So as a matter of practice, the 13 standard practice -- for example, settlements in a 14 mass tort -- would be you would be negotiating a 15 settlement based upon representations of a 16 plaintiff's firm as to who they represent. And 17 you would negotiate on -- on that basis. 18 At some point in time, like when it 19 comes down to payment, at that point you might 20 try to start vetting the number of claims they 21 had, but prior to that it would make no sense and 22 there's no rationale and no reason to -- to doubt 23 what -- what the plaintiff's lawyer said. 24 So, for example, in the PSA situation -- 25 Q. Mm-hmm. You -- you're stealing my</p>	<p style="text-align: right;">Page 51</p> <p>1 through that, that expensive and time-consuming 2 process. 3 In fact, especially because we're not 4 paying people. There's no incentive for a 5 plaintiff's lawyer to tell -- to lie about how 6 many people they represent because they're going 7 to -- they're going to get paid when they have 8 people -- the claims are going to get paid later 9 on if the vote goes through or not. 10 Q. Mm-hmm. 11 A. So -- yeah. So that's -- that's what I 12 would say about vetting processes. 13 Q. So just to put it in your vernacular, is 14 it fair to say that the -- where you are today 15 with the PSAs is the front end? I think that was 16 your term. 17 MS. BROWN: I object; 18 misstates his testimony. 19 A. So what I would say is that in the 20 process of the PSA, when entering into these PSA 21 agreements and getting the -- the reliance -- 22 relying -- it would be appropriate, typical, it 23 would be in -- in -- in line with everything we've 24 always done in all these cases to rely on the -- 25 you know, the -- the statements that counsel made</p>
<p style="text-align: right;">Page 50</p> <p>1 thunder. Go ahead. 2 A. Yeah. So in the PSA situation, we have 3 to rely in the first instance on the 4 representations made by counsel and this is the 5 same for virtually every settlement that you enter 6 into in a mass tort setting. You have to rely on 7 that. And it would make no sense at the front 8 end -- 9 Q. Mm-hmm. 10 A. -- to spend the time or resources to try 11 to verify each and every one of their plaintiffs. 12 That just -- it's not what happens in the 13 industry. It's not -- it's not what we've done. 14 It's not what we did in the PSA. 15 When it comes to a later point -- for 16 example, voting -- or when it comes to a payment, 17 that's really when you need to verify the -- 18 these -- the, you know, bona fides of -- of 19 these -- of these claimants because that's when it 20 makes sense. 21 But at the beginning of the process, 22 when -- especially in the PSA process, when all 23 you're trying to do is gauge the number of 24 claimants that have -- that can support something, 25 there's absolutely no -- no reason to have to go</p>	<p style="text-align: right;">Page 52</p> <p>1 to us about the people that they represent. 2 Q. Okay. So just to use a hypothetical, if 3 the -- the law firms that you've entered into PSAs 4 with, if they told you they had a million claims, 5 you wouldn't do anything to vet or confirm that, 6 would you? 7 MS. BROWN: I object -- I 8 object to the hypothetical. 9 THE WITNESS: Yeah. 10 MS. BROWN: Particularly for 11 a fact witness. I object. 12 Q. You can answer. 13 A. What I would say is there -- of course 14 there are going to be times when you -- if you 15 have doubts, then there are other steps you can 16 take. But generally the people that we -- we deal 17 with in this situation, I rely on -- on -- on 18 counsel to do the initial, you know, do we have 19 any doubts about what this person has? You know, 20 the number of claims they have. 21 We also have some backup, too. I mean, 22 we -- you know, it's -- it's not just, oh, here's 23 my -- here's my word. We ask for, you know -- we 24 do ask at times to see certain data, like their 25 list of clients, which are generally attached to</p>

<p style="text-align: right;">Page 61</p> <p>1 You've seen this document before, 2 Mr. Kim? 3 A. I have. 4 Q. And actually I notice Mr. Wuesthoff has 5 signed this agreement. 6 You know Mr. Wuesthoff, right? 7 A. I do. 8 Q. And he's -- is he on a business trip or 9 vacation? 10 A. He is -- has a personal trip. 11 Q. Personal vacation? 12 A. I guess it's a vacation. I actually 13 didn't ask him. You know, actually I don't know 14 whether it's a vacation or not but he's -- he's 15 away. I didn't ask that. 16 Q. Yeah. 17 When did you become aware that he was 18 going to be away? 19 A. When did I become aware? I think at 20 some point there was a request for his deposition 21 and at that time I asked him what his schedule was 22 and that's when I became aware. 23 Q. Okay. Okay. I want to look at page 6. 24 We'll be real quick about it because I think 25 people have had all had enough of Funding</p>	<p style="text-align: right;">Page 63</p> <p>1 Deane. 2 (Whereupon, exhibit is 3 received and marked Kim Deposition 4 Exhibit 4 for identification.) 5 MR. JONAS: Kim Number 4. 6 Oh, what's this one? 7 MR. BENSON: I gave you two. 8 She takes two. She keeps one. 9 MR. JONAS: Oh, she takes 10 two. See, I didn't know that. Thank 11 you. 12 THE REPORTER: Kim 4 for 13 identification. 14 THE WITNESS: Thank you. 15 BY MR. JONAS: 16 Q. Okay. Mr. Kim, again, we'll be quick 17 about this. This is the declaration of John Kim 18 in support of the first day pleadings that was 19 filed in the first bankruptcy. It's dated October 20 14th, '21. I just have a few questions. 21 A. Mm-hmm. 22 Q. I want to turn to page 9 of the document 23 at the bottom and it's paragraph 26. And you said 24 "As I mentioned above, the" -- 25 A. I'm sorry --</p>
<p style="text-align: right;">Page 62</p> <p>1 Agreement One in our life. 2 A. Mm-hmm. 3 Q. On page 6, I just want to confirm your 4 understanding of some of these words. In 5 subsection C on page 6, where it says "The funding 6 of any amounts to satisfy," and then 1.(i) talks 7 about the "payee's talc-related liabilities 8 established by a judgment of a court of competent 9 jurisdiction or final settlement thereof at any 10 time when there is no proceeding under the 11 bankruptcy code pending with respect to the 12 payee." 13 Do you see that? 14 A. Yeah, I do see that. 15 Q. Okay. And is that your under -- is 16 that -- is it your understanding that what that 17 section means is that funding agreement, the first 18 funding agreement, was available to LTL if there 19 was no pending bankruptcy cases? 20 A. To the extent that this agreement was 21 still in force, I would say yes. 22 Q. Okay. Okay. Okay. Let's take a 23 look -- we're going to mark I guess it will be 24 Kim-4. 25 MR. JONAS: Kim number 3,</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Sure, take your time. 2 A. Twenty-six? 3 Q. Page 9. 4 A. Got it. 5 Q. And paragraph 26. It says "As I 6 mentioned above" -- and the "I" is you, right? 7 A. Mm-hmm, yes. 8 Q. "As I mentioned above, the design of the 9 2021 corporate restructuring ensures that the 10 debtor has at least the same, if not greater, 11 ability to fund talc-related claims and other 12 liabilities as Old J -- JJCI had before the 13 restructuring." 14 Do you see that? 15 A. I do see that. 16 Q. And is that true today? 17 A. I'm sorry, is -- 18 Q. Is it true today that the debtor, LTL, 19 has at least the same, if not greater, ability to 20 fund talc-related claims and other liabilities as 21 Old JJCI had before the prior restructuring? 22 A. I believe it is. 23 Q. So you think today that -- well, strike 24 that. 25 What is the basis of your belief that</p>

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1 **would have been available to LTL to satisfy talc**
2 **claims?**
3 MS. BROWN: At what point in
4 time? I object.
5 **Q. While it was in existence.**
6 MS. BROWN: In bankruptcy?
7 MR. JONAS: No, outside of
8 bankruptcy.
9 A. Well --
10 **Q. Let me ask you this --**
11 A. Outside of bankruptcy, there was a
12 time -- but that was prefiling. It would have
13 been -- again, the fair market value of -- so --
14 so if there was no bankruptcy, no thought of
15 bankruptcy, nothing like that, then it, you know,
16 would be -- it would be the value of JJCI --
17 **Q. Yeah.**
18 A. -- at that time --
19 **Q. Yeah.**
20 A. -- solely without any support from J & J
21 --
22 **Q. Yeah.**
23 A. -- which, again, I think the fair market
24 value of the assets at that time was about \$60
25 billion.

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1 **Q. It was actually more than that, wasn't**
2 **it? It had increased from the time you signed the**
3 **funding agreement until when the bankruptcy was**
4 **dismissed. The value of JJCI had increased from**
5 **\$60-odd-billion to something more than that, is**
6 **that not right?**
7 A. I don't -- I don't know.
8 **Q. Okay. But just to put a point on it,**
9 **the moment in time when the bankruptcy -- when**
10 **Bankruptcy Number One was dismissed and the --**
11 **before the two hours or so later that you filed**
12 **Bankruptcy Number Two, there was at least a moment**
13 **there where you had -- LTL had the benefit of the**
14 **first funding agreement, right?**
15 MS. BROWN: I --
16 A. No, I disagree.
17 **Q. You disagree. And why do you disagree**
18 **with that?**
19 A. Because we had -- we had concluded that
20 there was a material risk that the funding
21 agreement was void or voidable as I stated in my
22 -- my declaration.
23 **Q. And who made the determination that the**
24 **funding agreement was void or voidable?**
25 A. At the end of the day, I guess I -- I

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1 made that determination, that there was a material
2 risk that there was -- that the funding agreement
3 was void or voidable and informed the board and
4 the board made that determination.
5 **Q. When did you first -- when did it first**
6 **come into your mind that the funding agreement**
7 **might be void or voidable?**
8 A. I think around -- it must have been
9 right around the time of the Third Circuit
10 decision.
11 **Q. Okay. And did anyone else comment to**
12 **you that, oh, my gosh, the funding agreement might**
13 **be void or voidable or just something you --**
14 **you -- you came up with?**
15 A. There were numerous discussions about
16 the enforceability of the funding agreement.
17 **Q. Okay. Well, I want to drill down on**
18 **that.**
19 **The Third Circuit decision comes out and**
20 **it found that the filing was in bad faith and**
21 **needed to be dismissed, correct?**
22 A. It found that the filing -- that the
23 bankruptcy needed to be dismissed, yes.
24 **Q. And that was -- let me get my date**
25 **right. That was on or about January 30th,**

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1 2023?
2 A. Yes.
3 **Q. Okay. So when -- following January**
4 **30th, 2023, and the Third Circuit decision,**
5 **approximately when was the first communication you**
6 **had with anybody about the possibility that the**
7 **funding agreement was void or voidable? Again,**
8 **I'm not asking for substance or legal**
9 **communications. I just want to know when the**
10 **first communication you had with anybody about the**
11 **possibility that it was void or voidable, when did**
12 **that happen?**
13 A. I think that day.
14 **Q. And had you -- and you had never thought**
15 **about it prior to that time?**
16 A. Never.
17 **Q. Never did any analysis of the funding**
18 **agreement?**
19 A. No.
20 **Q. What might happen if the bankruptcy's**
21 **dismissed?**
22 A. Not in line -- not -- not in line with
23 what the Third Circuit had said.
24 **Q. Hmm. Well, what was it about what the**
25 **Third Circuit said that made you believe that the**

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<p>1 funding agreement was void or voidable?</p> <p>2 A. There was a footnote that suggested that</p> <p>3 it was ironic that funding -- the guarantee by</p> <p>4 J & J which was done without -- that was not</p> <p>5 required by J & J to do caused the bankruptcy to</p> <p>6 be filed in bad faith. So that -- that guarantee</p> <p>7 was specifically put in in order to enhance the</p> <p>8 prospects of bankruptcy.</p> <p>9 And so immediately when the Third</p> <p>10 Circuit said that not -- not only did it not</p> <p>11 enhance the bankruptcy but, in fact, it thwarted</p> <p>12 it, we thought that that -- it was unfair, that it</p> <p>13 made little sense in the scheme of things, but</p> <p>14 that that would render the guarantee void or</p> <p>15 voidable because of various legal rationales.</p> <p>16 So that -- that's on the -- that's why</p> <p>17 the Third Circuit decision triggered -- triggered</p> <p>18 that issue.</p> <p>19 Q. What -- what law firm advised LTL in</p> <p>20 connection with the -- the negotiation of the</p> <p>21 original funding agreement?</p> <p>22 A. That was Jones Day.</p> <p>23 Q. And has the board investigated or</p> <p>24 requested other counsel to look at a malpractice</p> <p>25 claim against Jones Day in connection with</p>	<p>1 discussed this with have indicated that they</p> <p>2 believe that the Third Circuit -- the Third</p> <p>3 Circuit was wrong and that it should have been</p> <p>4 reheard.</p> <p>5 Q. What law firms have you discussed this</p> <p>6 with?</p> <p>7 MS. BROWN: Well, I -- yeah,</p> <p>8 I don't want you to get into any --</p> <p>9 THE WITNESS: I know, yeah.</p> <p>10 MS. BROWN: You can identify</p> <p>11 counsel that you have, but beyond that</p> <p>12 you should not discuss the specifics</p> <p>13 of discussions about the Third Circuit</p> <p>14 decision.</p> <p>15 BY MR. JONAS:</p> <p>16 Q. I'm not -- I'm certainly not asking for</p> <p>17 specifics of discussions. I just -- you said</p> <p>18 you've discussed the Third -- in connection with</p> <p>19 everyone agreeing that the Third Circuit was</p> <p>20 wrong.</p> <p>21 A. Yeah --</p> <p>22 Q. Let me finish, please. Let me finish,</p> <p>23 please.</p> <p>24 You said that you discussed that with</p> <p>25 law firms. I just want to know which law firms</p>
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<p>1 delivering a funding agreement that became void or</p> <p>2 voidable?</p> <p>3 A. Not -- certainly not.</p> <p>4 Q. Why not?</p> <p>5 A. Because when I looked at this issue,</p> <p>6 I -- I think everyone agrees that the Third</p> <p>7 Circuit decision, A, is wrong. We believe that</p> <p>8 the Third Circuit made a mistake. And -- and, B,</p> <p>9 that it was something that no one would have --</p> <p>10 could have anticipated.</p> <p>11 So, you know, that -- yeah, we -- we</p> <p>12 thought we did everything correctly, but that</p> <p>13 because of the Third Circuit's decision, which we</p> <p>14 believe was in error and changed the law, that --</p> <p>15 that that caused the purpose -- well, again, there</p> <p>16 are various legal theories behind it, but that</p> <p>17 frustrated the purposes of the funding agreement</p> <p>18 and rendered it void or voidable.</p> <p>19 Q. You said everyone agrees that the Third</p> <p>20 Circuit was wrong.</p> <p>21 A. Oh.</p> <p>22 Q. Who's -- who's "everyone"?</p> <p>23 A. Every -- that's -- that was broad.</p> <p>24 People that I've spoken to and advises the</p> <p>25 company. So the -- the law firms that we've</p>	<p>1 have you discussed that with?</p> <p>2 MS. BROWN: But if -- if he</p> <p>3 identifies the law firm, he will then</p> <p>4 identify the advice or the discussions</p> <p>5 or the statements.</p> <p>6 And so if you don't think you</p> <p>7 can do it without implicating legal</p> <p>8 discussions, then I'll advise you not</p> <p>9 to answer.</p> <p>10 A. I don't know how I can not divulge. I</p> <p>11 mean, it's sort of -- I'm trying to think of a way</p> <p>12 to phrase it differently.</p> <p>13 We certainly -- we certainly filed a</p> <p>14 motion to rehear and there were counsel listed on</p> <p>15 that motion that supported that position by --</p> <p>16 by -- by filing. So that would be Jones Day.</p> <p>17 That would be Hogan Lovells. That would be -- I'm</p> <p>18 not sure who else was actually on that filing.</p> <p>19 Skadden? I don't know.</p> <p>20 But -- but those certainly are -- are</p> <p>21 ones. Others I don't want to divulge on client --</p> <p>22 attorney-client privilege grounds.</p> <p>23 Q. Okay. But the LTL board has not</p> <p>24 investigated a possible claim against Jones Day in</p> <p>25 connection with negotiating an agreement which</p>

<p style="text-align: right;">Page 81</p> <p>1 became void?</p> <p>2 MS. BROWN: He already</p> <p>3 answered that and, truthfully, it</p> <p>4 calls for legal advice and divulgement</p> <p>5 of legal strategies. So he's not</p> <p>6 going to answer it a second time.</p> <p>7 MR. JONAS: So is that an</p> <p>8 instruction?</p> <p>9 MS. BROWN: Yeah.</p> <p>10 MR. JONAS: All right.</p> <p>11 BY MR. JONAS:</p> <p>12 Q. Okay. So I want to go back. It's</p> <p>13 late January. The Third Circuit issues its</p> <p>14 decision which you obviously thought was wrong</p> <p>15 and you start thinking about the -- the risk</p> <p>16 that the funding agreement was void or voidable,</p> <p>17 right?</p> <p>18 A. Among other -- that was one of the</p> <p>19 considerations that we -- that we had.</p> <p>20 Q. What other considerations did you</p> <p>21 have?</p> <p>22 A. I think we were looking at other</p> <p>23 contingency -- we were looking at what -- what the</p> <p>24 ramifications were for -- for dismissal of</p> <p>25 bankruptcy and -- and other options we could</p>	<p style="text-align: right;">Page 83</p> <p>1 The fund -- the parties to the funding</p> <p>2 agreement are LTL, right?</p> <p>3 A. Yes.</p> <p>4 Q. Johnson & Johnson Consumer, Inc., right?</p> <p>5 A. Yes. You're talking about the old --</p> <p>6 Q. Yeah, the old funding agreement.</p> <p>7 And Johnson & Johnson, right?</p> <p>8 A. Yes.</p> <p>9 Q. So did you ever discuss with those</p> <p>10 parties whether they thought the funding agreement</p> <p>11 was void or voidable?</p> <p>12 A. There were discussions among counsel for</p> <p>13 those parties.</p> <p>14 Q. Well, let me ask you. Your -- again,</p> <p>15 was it Johnson & Johnson or JJCI -- JJCI's view</p> <p>16 that the agreement was void or voidable?</p> <p>17 MS. BROWN: I think that's</p> <p>18 going to implicate legal advice and</p> <p>19 would cause you to speculate as well,</p> <p>20 so I object.</p> <p>21 Can you answer that question</p> <p>22 without divulging information of other</p> <p>23 lawyers that you may also have a</p> <p>24 privilege with under the common</p> <p>25 interest?</p>
<p style="text-align: right;">Page 82</p> <p>1 take. That's all put into the board minutes, I</p> <p>2 think.</p> <p>3 MS. BROWN: And, Jeff, when</p> <p>4 you get to a good spot, can we take a</p> <p>5 break before you do a new subject?</p> <p>6 MR. JONAS: Just give me a</p> <p>7 couple?</p> <p>8 MS. BROWN: Yep.</p> <p>9 MR. JONAS: Thank you.</p> <p>10 BY MR. JONAS:</p> <p>11 Q. So when you -- when it first came to</p> <p>12 your mind that the funding agreement must be void</p> <p>13 or voidable, what -- what steps did you take in</p> <p>14 that regard?</p> <p>15 MS. BROWN: Without revealing</p> <p>16 legal advice, Mr. Kim.</p> <p>17 MR. JONAS: Yeah. Yeah.</p> <p>18 Always the case.</p> <p>19 A. I think there were numerous discussions</p> <p>20 about the enforceability of -- of the funding</p> <p>21 agreement. There are certain alternatives to</p> <p>22 bankruptcy. You know, the -- the -- whether we</p> <p>23 should be refiling for bankruptcy.</p> <p>24 Q. Well, the funding agreement -- I just</p> <p>25 want to check.</p>	<p style="text-align: right;">Page 84</p> <p>1 THE WITNESS: No, but --</p> <p>2 MS. BROWN: Okay. Then I'm</p> <p>3 just going to instruct you not to</p> <p>4 answer.</p> <p>5 Q. You know, I'm just -- it's going to be</p> <p>6 a bad question, Mr. Kim, but I'd like to just cut</p> <p>7 to the chase because I know we want to take a</p> <p>8 break.</p> <p>9 So you're a party -- you're one of the</p> <p>10 parties to an agreement, right?</p> <p>11 A. We are.</p> <p>12 Q. And it's a good agreement for you</p> <p>13 because the other party's going to give you a lot</p> <p>14 of money, right?</p> <p>15 A. Well, it's -- not necessarily, no. It's</p> <p>16 a bad agreement because our principal purpose for</p> <p>17 getting into the -- for -- for entering into all</p> <p>18 these agreements -- the divisional merger</p> <p>19 agreements, the funding agreements -- the</p> <p>20 principal purpose was to try to resolve these</p> <p>21 lawsuits in -- these talc lawsuits in bankruptcy</p> <p>22 because that's where we can get a full, fair,</p> <p>23 final resolution.</p> <p>24 So if there's something in those</p> <p>25 agreements that actually -- not -- not enhances</p>

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1 **but is in financial distress --**
2 A. Mm-hmm.
3 **Q. -- what time period were you referring**
4 **to?**
5 A. At all -- at all times.
6 **Q. At all times.**
7 A. Yes.
8 **Q. Okay. So I'm referring to at all**
9 **times.**
10 A. Okay.
11 **Q. What is the basis of your saying that**
12 **LTL is not -- is not insolvent and -- but is in**
13 **financial distress?**
14 A. Because it has sufficient funds to pay
15 off its -- its debts currently as they come due.
16 It is not -- I don't think it fits any measure of
17 what's insolvent. Financial distress is a little
18 tougher because I think, as the Third Circuit
19 pointed out, there's really no definition of
20 financial distress. But what I would say is that
21 at every point in time -- and I would include even
22 prior to our -- you know, we disagree with the
23 Third Circuit on -- on whether it was in financial
24 distress during LTL 1.
25 But I would say at all points in time

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1 because of the talc liability, the -- that
2 liability puts the finances of, you know, the
3 operations and business in -- in jeopardy, which I
4 think, you know, would be a definition of
5 financial distress. So the amount of -- of
6 litigation costs especially and the threat of --
7 of -- of these outsized verdicts, if that happens,
8 and -- and it could happen, it would put the --
9 the business in -- in -- in distress.
10 **Q. But at the time it filed, it had -- LTL**
11 **had agreements with high-teen number of firms**
12 **representing, you say, 60,000-odd claims and a**
13 **plan to resolve all talc claims fairly and**
14 **equitably with a commitment by J & J entities to**
15 **fund \$8.9 million in the context of a plan.**
16 **So why was it in financial distress?**
17 A. Well, that's if it did file for
18 bankruptcy. I think we're looking at the time
19 period just before filing.
20 **Q. I see.**
21 **So it was in financial distress at the**
22 **moment before it filed, but it's not in financial**
23 **distress anymore, right?**
24 A. Well, it's not in financial distress --
25 the way that -- and you know this better than I.

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1 The -- the way that bankruptcy works is once it
2 goes into bankruptcy, there are automatic stays
3 put in place. And we're, again, moving for
4 preliminary injunction that would stop the li --
5 the liabilities from -- from becoming -- coming to
6 fruition.
7 So once you file bankruptcy, the concept
8 of financial distress I think is really not
9 something that you can look at. I think what you
10 have to look at is just before filing bankruptcy
11 what the liabilities are and what the -- the
12 assets are.
13 **Q. And let me ask you. You in your**
14 **affidavit -- strike.**
15 **Part of your declaration was in support**
16 **of the -- of LTL's request that a preliminary**
17 **injunction be entered, correct?**
18 A. Correct.
19 **Q. And you -- in your declaration, you said**
20 **that you needed the preliminary injunction to**
21 **avoid immediate and irreparable harm, right?**
22 A. Correct.
23 **Q. Okay. And what is -- what do you**
24 **believe to be the immediate and irreparable harm**
25 **to the debtor if a preliminary injunction is not**

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1 **entered?**
2 A. I think we covered a lot of this in
3 our -- in the first LTL hearings and, you know, I
4 don't want to repeat myself too much. But, you
5 know, the -- the preliminary injunction goes to
6 protected parties, and so mostly J & J retailers.
7 You know, the -- the issue there is that
8 the plaintiffs would be bringing claims against
9 the protected parties for the same product, same
10 injury, same plaintiff. The theories would be
11 identical. Basically they'd be suing for the same
12 things that they would be suing LTL for. I think,
13 again, we -- we covered this at -- at length in
14 our prior -- prior case.
15 And that letting things like those cases
16 go forward would really be detrimental, especially
17 in this bankruptcy where we have a plan that we're
18 working on, that's being supported by lawyers that
19 represent 60,000 plaintiffs, having all this
20 ancillary litigation on the same claims, same
21 product, with these same plaintiffs, would
22 clearly be a detriment to the ability to -- to
23 reorganize.
24 There are all these other issues that I
25 think we've gone through at length in the prior

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1 **How long was the March 28th board**
 2 **meeting?**
 3 A. March 28th board meeting was a couple
 4 hours.
 5 **Q. Okay.**
 6 A. Maybe three. Two to three hours.
 7 **Q. And would you say this was the principal**
 8 **meeting where the -- there was substantive**
 9 **discussion about filing a second bankruptcy if the**
 10 **first bankruptcy was dismissed?**
 11 A. No. I think if you look at the March
 12 16th minutes, there was discussion then too.
 13 **Q. Okay. Similarly, March 16th and there**
 14 **was also discussion about terminating and entering**
 15 **into a new funding agreement?**
 16 A. I believe there was.
 17 **Q. Okay. And, again, I'm not asking you**
 18 **for the substance of legal advice, but do you**
 19 **recall if -- whether on the March 16th meeting**
 20 **there was discussion about whether or not**
 21 **terminating the funding agreement was a fraudulent**
 22 **conveyance?**
 23 MS. BROWN: Objection.
 24 If you can't answer that
 25 without implicating legal advice --

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1 THE WITNESS: Yeah.
 2 MR. JONAS: I think he can
 3 tell me whether he recalls there was
 4 discussion.
 5 MS. BROWN: Well, but by
 6 saying yes or no to that, he's talking
 7 about a legal issue and the board
 8 minutes at Exhibit 11 reference this
 9 discussion was being led by
 10 Mr. Prieto.
 11 MR. JONAS: Again, I --
 12 MS. BROWN: What's the
 13 question again?
 14 MR. JONAS: The question was:
 15 Do you recall whether at the March
 16 16th board meeting, there was any
 17 discussion with respect to whether the
 18 termination of the funding agreement
 19 was a fraudulent conveyance?
 20 MS. BROWN: Do you recall?
 21 Yes or no. You can answer.
 22 A. Yes, I recall.
 23 **Q. And I take it the -- you couldn't tell**
 24 **me anything else about that that would not be**
 25 **covered by the privilege?**

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1 A. Yeah, I think that's right. I think
 2 that's right, yeah.
 3 **Q. Okay. And would that be the same answer**
 4 **for any additional board discussions that took**
 5 **place after March 16th on that topic?**
 6 A. Yes. Regarding the discussions, yes.
 7 Any discussions, yes.
 8 **Q. Okay. Do you have a belief as to**
 9 **whether or not termination of the funding**
 10 **agreement was a fraudulent conveyance?**
 11 MS. BROWN: I object. I
 12 object to answering that substantively
 13 because your opinion is the legal
 14 opinion.
 15 THE WITNESS: I think he said
 16 just do I have a belief? I do.
 17 BY MR. JONAS:
 18 **Q. Okay. Betcha I know the answer.**
 19 **Okay. Let's move along. Let's move**
 20 **along before we all run out of steam.**
 21 **Just take a look at page 24, please.**
 22 A. Yes.
 23 **Q. And the -- the -- the block here that**
 24 **shows assets and estimated values, do you see**
 25 **that?**

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1 A. Yes.
 2 **Q. And this is telling us that LTL had cash**
 3 **of 30 million and the RAM ownership was worth**
 4 **roughly 367 million?**
 5 A. That is correct.
 6 **Q. And then why is it showing the value of**
 7 **Holdco, if you know?**
 8 MS. BROWN: Calls for
 9 speculation.
 10 A. Because we were discussing Holdco's
 11 funding obligation at the time.
 12 **Q. Okay. And it shows these -- it shows**
 13 **these assets of Holdco. And I tried to understand**
 14 **it when I read the materials. Do you -- can you**
 15 **explain the "2022 GH Biotech dividend"? Because I**
 16 **couldn't understand it.**
 17 A. I -- I -- I am not the person. This was
 18 reported to me. This comes from -- these numbers
 19 come from the finance group.
 20 **Q. Okay.**
 21 A. They're the ones that would know what
 22 they really mean.
 23 **Q. And what finance group are you referring**
 24 **to?**
 25 A. The J & J finance group.

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1 **Q. J & J. Okay.**
2 A. Their -- their shared service that does
3 treasury services for all of the J & J
4 subsidiaries.
5 **Q. And if I look at page 25, I take it when**
6 **I see the bullet that says "No estimate or**
7 **valuation of aggregate talc liability," do you see**
8 **that?**
9 A. I do.
10 **Q. So LTL, as of this date at least, March**
11 **28th, didn't have an estimate or a valuation of**
12 **aggregate talc liability. Is that what that tells**
13 **me?**
14 A. Yes. We only knew that, of course, it
15 was substantial.
16 **Q. Okay. Okay. Okay. Let's move on.**
17 MR. JONAS: Kim 19, please.
18 (Whereupon, exhibit is
19 received and marked Kim Deposition
20 Exhibit 15 for identification.)
21 THE REPORTER: Kim 15 for
22 identification.
23 THE WITNESS: Thank you.
24 BY MR. JONAS:
25 **Q. Okay. Mr. Kim, this is minutes from a**

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1 **board meeting on April 2nd, 2023, correct?**
2 A. Correct.
3 **Q. And you attended?**
4 A. I did.
5 **Q. Okay. And I see below -- I'm trying to**
6 **expedite here a little bit -- in the paragraph**
7 **under "Introductory remarks and call to order," it**
8 **says "Mr. Kim welcomed the members of the board,"**
9 **et cetera, right?**
10 A. Yes.
11 **Q. And then on the agenda was -- Item 3 was**
12 **a -- a request for board action with proposed next**
13 **steps, correct?**
14 A. Correct.
15 **Q. And one of those actions -- or a part of**
16 **those actions were to, upon dismissal of the**
17 **bankruptcy case, terminate the existing funding**
18 **agreement, correct?**
19 A. Correct.
20 **Q. Enter into a new funding agreement,**
21 **correct?**
22 A. Correct.
23 **Q. File -- and -- and file bankruptcy**
24 **again, correct?**
25 A. Correct.

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1 **Q. Okay. And those were approved by the**
2 **board on April 2nd?**
3 A. They were. I'm sorry, April 2nd, yes.
4 **Q. Okay. And, you know, if we look at page**
5 **3, again we see this discussion about ongoing**
6 **discussions with the future claims representative.**
7 **Do you see that?**
8 A. Yes.
9 **Q. And here it tells us that the FCR had**
10 **determined not to submit a declaration in support**
11 **of the new case.**
12 A. Correct.
13 **Q. And I apologize if I asked you, but do**
14 **you know the reason why she made that decision?**
15 A. No. She decided to take no position.
16 **Q. Okay. But let me ask you, why wasn't**
17 **it -- why was there an effort to get her support,**
18 **if you know?**
19 MS. BROWN: Yeah, objection.
20 Calls for speculation.
21 And, Mr. Kim, I think you
22 testified earlier this issue
23 implicated legal advice --
24 THE WITNESS: Yeah.
25 MS. BROWN: -- and so I'll

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1 instruct you --
2 (Unintelligible cross talk;
3 reporter requests one speaker.)
4 THE REPORTER: So I'll
5 instruct you?
6 MS. BROWN: Not to reveal any
7 legal advice.
8 A. Yeah, it would be privileged.
9 **Q. Okay. And last part of this paragraph**
10 **talks about discussion with risk management**
11 **personnel of J & J regarding the availability**
12 **of --**
13 MR. JONAS: Can everybody
14 mute, please? Mute. Mute. Mute.
15 **Q. The last topic is "Discussions with risk**
16 **management personnel at J & J regarding the**
17 **availability of D&O insurance coverage for members**
18 **of the board."**
19 **Do you see that?**
20 A. I do.
21 **Q. Do you remember the nature of that**
22 **discussion?**
23 MS. BROWN: And hold on a
24 second. It's presented by Mr. Prieto,
25 so, again, same instructions.

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1 A. That comes from my experience in the
 2 industry and discussions with counsel.
 3 **Q. Which counsel?**
 4 A. Jim Murdica.
 5 **Q. Okay. But other than that, you -- you**
 6 **have no basis for that statement?**
 7 MS. BROWN: Objection.
 8 Misstates testimony.
 9 A. I know how litigation financing works
 10 and the prevalence of it in the industry.
 11 **Q. And do you think that interfered with**
 12 **your ability to settle talc claims?**
 13 A. It certainly had an effect, yes.
 14 **Q. What was the effect?**
 15 A. The -- well, the com -- the common
 16 effect is that lawyers that have financing have to
 17 pay back their -- their lenders before they make
 18 any profit and that affects the settlements, the
 19 ability to settle and the amount of settlements.
 20 Sort of intellectual property ipse dixit, I
 21 guess.
 22 **Q. We talked about two rescinding firms. I**
 23 **think you said Seeger Weiss and Robinson, is that**
 24 **right?**
 25 A. Yes.

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1 **Q. Okay. Do -- do you understand as to --**
 2 **well, strike that.**
 3 **Is the Lanier Firm part of the settling**
 4 **firms with Johnson & Johnson or not?**
 5 A. I -- I don't know. I don't know.
 6 **Q. Okay.**
 7 MR. JONAS: Okay. If we take
 8 five minutes, I think I can wrap up.
 9 MS. BROWN: Okay. Sounds
 10 good.
 11 THE VIDEOGRAPHER: This ends
 12 Unit 5. We're off the record at 6:11.
 13 (Whereupon, a recess is
 14 taken.)
 15 THE VIDEOGRAPHER: This
 16 begins Unit 6. We're on the record at
 17 6:22.
 18 MR. JONAS: And I will turn
 19 over the examination to others that
 20 are here to participate. I think
 21 Mr. Block is going to go first.
 22 All yours, Jerry.
 23 CROSS-EXAMINATION
 24 BY MR. BLOCK:
 25 **Q. Hello, Mr. Kim. Can you hear me okay?**

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1 A. Hello, Mr. Block. Yes, I can.
 2 **Q. Okay. As you know, my name is Jerome**
 3 **Block from the law firm of Levy Konigsberg and I**
 4 **represent certain talc claimants.**
 5 **Mr. Kim, LTL was formed on or about**
 6 **October 12th, 2021, correct?**
 7 A. That is correct.
 8 **Q. And when LTL was formed, as of the**
 9 **moment it was formed, it had the funding agreement**
 10 **that was backed by J & J, correct?**
 11 MS. BROWN: Objection to the
 12 form.
 13 A. So it had -- it had the funding
 14 agreement -- it had a funding agreement with New
 15 JJCI and J & J.
 16 **Q. Right.**
 17 **And you've read the Third Circuit**
 18 **opinion on the LTL case, correct?**
 19 A. I did.
 20 **Q. And did you see where the Third Circuit**
 21 **actually called the funding agreement a "birth**
 22 **gift" to LTL? It's something that LTL had since**
 23 **day one of its formation, correct?**
 24 A. I -- I did see that in the -- in the
 25 decision, yes.

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1 **Q. Okay. And as of the date of its**
 2 **formation, LTL had access to the funding agreement**
 3 **outside of the bankruptcy even before LTL filed**
 4 **for bankruptcy on October 14th, 2021, correct?**
 5 A. Yes. For that period of time before
 6 filing, it had access to the funding agreement.
 7 **Q. Okay. And then do you recall, sir,**
 8 **that -- it was either the day before or a couple**
 9 **days before LTL filed for bankruptcy in October**
 10 **14th, 2021. Do you remember there was a board**
 11 **meeting to discuss options including whether to**
 12 **file for bankruptcy?**
 13 A. I do recall that.
 14 **Q. Okay. And -- and we've looked at the**
 15 **minutes of that meeting before, correct?**
 16 A. In the prior proceeding, we did, yes.
 17 **Q. Okay. And what you explained to us, and**
 18 **what the meetings reflect, was that various**
 19 **options were presented to the LTL board and**
 20 **ultimately you made a recommendation that**
 21 **bankruptcy be filed and the board did decide to**
 22 **file for bankruptcy which was filed on October**
 23 **14th, 2021, correct?**
 24 A. I believe that's true. I -- I don't
 25 have the -- the filing in front of me for the

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1 date, but I think that -- that sounds right.
 2 **Q. Okay. And if LTL -- strike that.**
 3 **And if the board of LTL at that board**
 4 **meeting prior to October 14th, 2021, had decided**
 5 **not to pursue bankruptcy, LTL still would have had**
 6 **that funding agreement that was backed by J & J**
 7 **and JJCI, correct?**
 8 A. I would say -- I testified to this in
 9 the last proceeding. What I would say is that the
 10 purpose for -- for all the transactions, including
 11 the funding agreement, including the additional
 12 merger, all of that was to enable LTL to file for
 13 bankruptcy to resolve these talc claims, you know,
 14 efficiently and fully.
 15 The -- the thought that LTL would not
 16 have filed bankruptcy -- I think I've testified in
 17 the prior proceeding everyone expected --
 18 there's -- there's no reasonable way to view LTL's
 19 situation and -- and not know that it was filing
 20 for bankruptcy.
 21 So I would say the -- the entire purpose
 22 of the entire agree -- all the agreements,
 23 including the funding agreement, was to enhance
 24 LTL's ability to resolve these claims in
 25 bankruptcy including the J & J guarantee. You

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1 know, the J & J guarantee was there to help the
 2 bankruptcy process and the resolution of the
 3 claims.
 4 And so when the Third Circuit made a
 5 decision that said the -- the guarantee not only
 6 did not enhance the -- the bankruptcy, but, in
 7 fact, was the reason why it shouldn't go forward,
 8 I would say that was a frustration of the
 9 purpose.
 10 **Q. Okay. And we can go back and look at**
 11 **it, but you know that your first day declaration**
 12 **from October of 2021 describes the funding**
 13 **agreement and describes that that funding**
 14 **agreement is available to LTL both inside of**
 15 **bankruptcy and outside of bankruptcy, correct?**
 16 A. And I stand by that based upon what we
 17 knew at the time.
 18 **Q. Okay. And you, sir, you were in court**
 19 **for the motion to dismiss hearing in February of**
 20 **2022, correct?**
 21 A. I was.
 22 **Q. And you were there when Greg Gordon gave**
 23 **his closing argument in favor of dismissal,**
 24 **correct?**
 25 A. I was.

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1 **Q. And you know that Greg Gordon told Judge**
 2 **Kaplan on the record that the 2021 funding**
 3 **agreement was available to pay talc claims outside**
 4 **of bankruptcy even if the case was dismissed,**
 5 **correct?**
 6 A. Correct, based upon the facts and the
 7 law that we knew at the time. That's absolutely
 8 correct.
 9 What -- what changed --
 10 **Q. Okay.**
 11 MS. BROWN: Let him finish.
 12 I'm sorry, Jerry. He's not done.
 13 Go ahead.
 14 A. What changed was when the Third Circuit
 15 decision came in and said that the -- the fund --
 16 basically it took the provision that we were
 17 relying on to help LTL in bankruptcy and said that
 18 provision actually prevented the LTL bankruptcy.
 19 That -- that changed -- that changed everything
 20 and -- and so you have to look at Mr. Gordon's
 21 statements in that context.
 22 **Q. Now, sir, when LTL filed for bankruptcy**
 23 **on October 14th, 2021, you knew that there was a**
 24 **risk that that bankruptcy case would be dismissed,**
 25 **correct?**

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1 A. There was always a risk, but we did not
 2 know that that risk was based upon the very clause
 3 that we put in to enhance the bankruptcy.
 4 **Q. And when you signed that bankruptcy**
 5 **petition that was filed on October 14th, 2021, why**
 6 **was it that you understood that there was a risk**
 7 **that that bankruptcy would be dismissed?**
 8 A. There could be various reasons, but what
 9 we did not contemplate was that the bankruptcy
 10 would be dismissed because of the clause that we
 11 were using to help to enhance the -- the
 12 possibility of -- of LTL resolving these --
 13 these -- the talc litigation in the bankruptcy.
 14 **Q. And when you filed the bankruptcy case**
 15 **for LTL on October 14th, 2021, what were the**
 16 **various ways that you could foresee would be a**
 17 **basis for the dismissal of that bankruptcy when**
 18 **you filed it?**
 19 MS. BROWN: And, Mr. Kim, to
 20 the extent that's based on legal
 21 advice, don't -- don't divulge any
 22 legal discussions.
 23 A. I would -- I would say -- yeah, I
 24 would say it's all sort of legal conclusions and
 25 advice.

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1 nowhere.

2 A. I can hear you.

3 Q. All right. Great. I'll get right to

4 it.

5 Mr. Kim, I believe earlier today you

6 testified that LTL continues to believe that it

7 was in financial distress prior to the Third

8 Circuit's ruling, is that correct?

9 A. We -- we do.

10 Q. All right. So even under Funding

11 Agreement One, the 2021 funding agreement, LTL

12 believes even today that it was in financial

13 distress?

14 A. It does.

15 Q. Okay. And -- and LTL believes under

16 Funding Agreement Two that it is not insolvent,

17 but that it remains in financial distress?

18 A. It does.

19 Q. All right. And -- and the basis for

20 that belief of financial distress is the same

21 under Funding Agreement Two as it was under

22 Funding Agreement One. Is that fair?

23 A. I'm not sure I can parse that through.

24 Can you -- can you repeat that?

25 Q. Sure. Let me come at it a different

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1 way.

2 You understand that people representing

3 claimants may contend that the rescission of

4 Funding Agreement One and replacement of it with

5 Funding Agreement Two was a fraudulent transfer.

6 You understand that claim may be made?

7 A. I do.

8 Q. All right. And -- and I believe you

9 testified earlier that you do not believe that it

10 was, in fact, a fraudulent transfer.

11 A. I do.

12 Q. All right. And -- and can we agree that

13 it is your belief that the substitution of Funding

14 Agreement Two for Funding Agreement One did not

15 render LTL insolvent?

16 A. Yes.

17 Q. All right. And can we also agree that

18 it is your belief that at least toward the

19 immediate future, the substitution of Funding

20 Agreement Two for Funding Agreement One did not

21 impair LTL's ability to fund its top liabilities

22 inside or outside of bankruptcy?

23 A. Actually, I don't know that I can give

24 that legal conclusion right now.

25 Q. Well, so -- so that's part of the

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1 question of financial distress, whether LTL can

2 fund its liabilities as they're going to be

3 expected to come due.

4 So let me ask you a different question

5 then. Prior to funding -- filing of LTL 1, what

6 was the annual indemnity and cost to defense

7 stream of payments for the Johnson & Johnson

8 family for talc litigation?

9 A. Yeah, I -- I don't recall right now. I

10 testified at length to that in the last

11 proceeding.

12 Q. Okay.

13 A. I stand on the record on that.

14 Q. My -- my question is it was no more --

15 if we exclude the Ingham verdict, it wasn't any

16 more than \$2 billion a year. Is that consistent

17 with your recollection?

18 A. Actually, sitting here today, I -- I

19 don't recall. I just -- I'd rely on the -- my

20 last testimony from the prior proceeding.

21 Q. Whatever that number was, can we agree,

22 Mr. Kim, that if the court dismisses this

23 bankruptcy ten days from now and LTL returns to

24 the court system, for the foreseeable future

25 backed with its own assets, the stream of royalty

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1 payments and the other assets that you described,

2 and backed with the funding agreement with Holdco,

3 LTL will be able to manage its asbestos talc

4 liabilities for the next three years?

5 MS. BROWN: Object;

6 hypothetical.

7 THE WITNESS: Hypothetical.

8 MS. BROWN: Calls for a legal

9 conclusion. Incomplete.

10 A. Yeah, I can't -- I can't answer that.

11 Q. Would LTL be able to -- so you -- you

12 cannot say as you sit here today that LTL has any

13 evidence that it would not be able to fund its

14 talc liabilities in the tort system for the next

15 two, five or ten years if the court returns it to

16 the tort system?

17 MS. BROWN: Object. That

18 misstates his testimony.

19 Q. Correct?

20 A. Yeah. That -- yeah, that misstates my

21 testimony. It could be that -- you know, again,

22 just looking at -- you're just looking at costs.

23 But, you know -- and the cost -- the cost of what

24 a tort claim is. There are other litigations

25 going on including AG litigation, including the

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1 securities litigation, and there's the runaway
 2 verdict issue.
 3 So, you know, your time frame of -- I
 4 think -- I think what you're really getting at is
 5 the immanency. I -- I would say that we are in
 6 imminent financial distress if we get dismissed.
 7 **Q. If you get dismissed and other things**
 8 **happen, then there's a possibility --**
 9 A. No.
 10 **Q. -- that LTL might not be able to meet**
 11 **its obligations. Is that fair?**
 12 A. No. I would say we are in imminent
 13 financial distress.
 14 **Q. Okay. So what is the imminent -- what**
 15 **is the factual basis for the imminent financial**
 16 **distress of LTL given the fact that it's backed by**
 17 **Holdco which has a market value of somewhere**
 18 **around \$30 billion and LTL's own considerable**
 19 **entity?**
 20 MS. BROWN: And, again, I'll
 21 caution you. Just reveal factual
 22 information not legal advice.
 23 A. So I would rely on the testimony from
 24 the last proceeding that -- where the court found
 25 that we were in financial distress just based --

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1 based upon when -- when it was -- when we had New
 2 JJCI funding agreement.
 3 **Q. All right.**
 4 A. It's the same -- the same -- the same
 5 basis.
 6 And, in fact, I think our liabilities
 7 probably have increased since then because of
 8 the -- you know, the -- the -- the passage of
 9 time. And so I think based upon all -- all the
 10 factors that were in the prior proceeding would be
 11 applicable to the current proceeding.
 12 **Q. Okay. Mr. Kim, the court that you just**
 13 **referred to in that answer is the bankruptcy**
 14 **court, Judge Kaplan, correct?**
 15 A. That is.
 16 **Q. Okay. Great.**
 17 **Different questions.**
 18 **Johnson & Johnson never formally**
 19 **rescinded the funding agreement prior to its**
 20 **rescission and agreement with LTL, correct?**
 21 MS. BROWN: Objection; vague.
 22 I don't understand the question.
 23 **Q. All right. Let me try it a different**
 24 **way.**
 25 **Did Johnson & Johnson ever refuse to pay**

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1 **any amounts under the funding agreement?**
 2 MS. BROWN: Objection;
 3 assumes facts --
 4 **Q. In its --**
 5 (Unintelligible cross talk;
 6 reporter requests one speaker.)
 7 **Q. All right. Did Johnson & Johnson ever**
 8 **refuse to pay any amounts requested by LTL under**
 9 **Funding Agreement One?**
 10 MS. BROWN: Lacks foundation.
 11 A. I don't recall. I'd have to --
 12 **Q. Did --**
 13 A. Yeah, I'd have to -- yeah, I don't
 14 believe that it -- that it refused funding, but
 15 that's a different question than whether the
 16 funding agreement is voidable.
 17 **Q. Did Johnson & Johnson ever tell LTL that**
 18 **it would not honor the funding agreement because**
 19 **it considered it to be void or voidable? Not that**
 20 **it might, not that it could be void or voidable.**
 21 **Did Johnson & Johnson ever tell LTL we're not**
 22 **going to pay, you can't make us?**
 23 A. They're conversations with counsel.
 24 MS. BROWN: Okay. To the
 25 extent answering this question

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1 implicates legal discussions, common
 2 interest privilege, I'm going to
 3 instruct you not to answer.
 4 **Q. That was a conditional instruction,**
 5 **Mr. Kim. Are you going to not answer at all?**
 6 A. Yeah, it -- it would implicate legal --
 7 legal discussions.
 8 **Q. So as we sit here today, there's no**
 9 **evidence that Johnson & Johnson ever declared the**
 10 **funding agreement void or -- or rescinded its**
 11 **commitment to honor the funding agreement,**
 12 **correct?**
 13 MS. BROWN: That -- that
 14 misstates his testimony. I object.
 15 A. I would say --
 16 **Q. Is that correct?**
 17 A. I would say, as I testified, both
 18 Johnson & Johnson and LTL concluded that the
 19 contract -- there's a material risk that the
 20 funding agreement was void or voidable and
 21 unenforceable.
 22 **Q. Okay. The material risk depends on**
 23 **Johnson & Johnson refusing to pay and then LTL**
 24 **attempting to enforce, correct?**
 25 A. It does not, no.

<p style="text-align: right;">Page 209</p> <p>1 MR. RUCKDESCHEL: Okay. No</p> <p>2 further questions from me.</p> <p>3 CROSS-EXAMINATION</p> <p>4 BY MR. THOMPSON:</p> <p>5 Q. Hello, Mr. Kim. Clay Thompson with</p> <p>6 Maune Raichle on behalf of Katherine Tollefson.</p> <p>7 Can you hear me okay?</p> <p>8 A. I can, Mr. Thompson.</p> <p>9 Q. Okay. Just following up on Mr.</p> <p>10 Ruckdeschel's comments, are you saying that</p> <p>11 outside of legal conversations with lawyers, you</p> <p>12 never were told by anyone at Johnson & Johnson</p> <p>13 that Johnson & Johnson was refusing to honor the</p> <p>14 funding agreement?</p> <p>15 A. Outside of any conversations I may have</p> <p>16 had, I -- yeah, I don't have any information about</p> <p>17 that.</p> <p>18 Q. What I'm saying is that no one came to</p> <p>19 you -- you never went to Johnson & Johnson with no</p> <p>20 lawyers involved and they refused to honor the</p> <p>21 funding agreement in your capacity as the LTL</p> <p>22 Management chief legal officer, is that right?</p> <p>23 A. I've -- I've never approached anyone at</p> <p>24 Johnson & Johnson about that, no.</p> <p>25 Q. And no one --</p>	<p style="text-align: right;">Page 211</p> <p>1 form.</p> <p>2 A. I would say Johnson & Johnson's talc</p> <p>3 liability is LTL's talc liabil -- talc liability.</p> <p>4 Q. Right.</p> <p>5 And so the purpose that -- LTL's purpose</p> <p>6 of existence, formed in 2021 and filed for</p> <p>7 bankruptcy in 2021 and then again three weeks ago,</p> <p>8 its purpose is to resolve both Johnson & Johnson's</p> <p>9 talc liability and LTL's talc liability in a</p> <p>10 bankruptcy, is that correct?</p> <p>11 A. No. Again, I would say that Johnson &</p> <p>12 Johnson's talc liability is LTL's talc liability.</p> <p>13 There's no -- I don't believe there's a separate</p> <p>14 talc liability for Johnson & Johnson.</p> <p>15 Q. Right.</p> <p>16 A. So it is --</p> <p>17 Q. So --</p> <p>18 (Unintelligible cross talk; reporter</p> <p>19 requests one speaker.)</p> <p>20 MS. BROWN: Okay.</p> <p>21 Mr. Thompson, he wasn't done. Let's</p> <p>22 just let him finish, please.</p> <p>23 Go ahead.</p> <p>24 A. To start over again, I believe that</p> <p>25 Johnson & Johnson's talc liability is LTL's talc</p>
<p style="text-align: right;">Page 210</p> <p>1 A. Other than --</p> <p>2 (Unintelligible cross talk; reporter</p> <p>3 requests one speaker.)</p> <p>4 A. I'm sorry. I'm sorry. Other than</p> <p>5 through lawyers.</p> <p>6 Q. Understood.</p> <p>7 And -- and no one at Johnson & Johnson</p> <p>8 told you, outside of communications with lawyers</p> <p>9 that there's some assertion of potential privilege</p> <p>10 for, no one at Johnson & Johnson ever told you</p> <p>11 that they refused to honor the funding agreement</p> <p>12 to LTL Management of which you are the chief legal</p> <p>13 officer, is that right?</p> <p>14 MS. BROWN: Objection; asked</p> <p>15 and answered.</p> <p>16 You can --</p> <p>17 A. Other than through -- through</p> <p>18 discussions with lawyers.</p> <p>19 Q. Understood. Okay.</p> <p>20 The purpose of LTL Management LLC, which</p> <p>21 was formed in 2021, is to coordinate a mass</p> <p>22 settlement of both LTL's talc liability and</p> <p>23 Johnson & Johnson's talc liability in a</p> <p>24 bankruptcy. Is that fair?</p> <p>25 MS. BROWN: Objection to the</p>	<p style="text-align: right;">Page 212</p> <p>1 liabil -- talc liability and that -- so when you</p> <p>2 say that we're settling sort of two separate</p> <p>3 liabilities, I -- I would disagree with that.</p> <p>4 Q. I understand. I understand that that's</p> <p>5 your -- your position. And I mean to allow you to</p> <p>6 finish your answers. I just -- you know, there's</p> <p>7 a bit of delay maybe over the Zoom.</p> <p>8 Would you agree with me that if a plan</p> <p>9 were confirmed in this case, that it's LTL's</p> <p>10 intention that because of that, a bankruptcy plan</p> <p>11 confirmed, that no one will be permitted to sue</p> <p>12 J & J in the tort system? Is that a better way to</p> <p>13 put that?</p> <p>14 MS. BROWN: I -- I object and</p> <p>15 instruct you not to answer to the</p> <p>16 extent that that implicates legal</p> <p>17 discussions and legal conclusions.</p> <p>18 I also object to the</p> <p>19 hypothetical.</p> <p>20 Q. Well, I asked you if -- if the purpose</p> <p>21 of LTL was to coordinate a settlement of all of</p> <p>22 J & J's talc liability and you said that you</p> <p>23 didn't feel that J & J had independent liability.</p> <p>24 Is that accurate?</p> <p>25 A. That is accurate. I -- I feel like all</p>